

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 16, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TONI S.,¹

Plaintiff,

v.

CAROLYN COLVIN, Acting
Commissioner of Social Security,²

Defendant.

No. 2:24-cv-00191-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." *See* LCivR 5.2(c).

² Carolyn Colvin became the Acting Commissioner of Social Security on November 30, 2024. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), she is hereby substituted for Martin O'Malley as the defendant.

1 Due to fibromyalgia, carpal tunnel syndrome, obesity, depression, anxiety,
2 post traumatic stress disorder (PTSD), a thyroid condition, asthma, and irritable
3 bowel syndrome (IBS), Plaintiff Toni S. claims that she is unable to work fulltime
4 and applied for disability insurance benefits and supplemental security income
5 benefits. She appeals the denial of benefits by the Administrative Law Judge (ALJ)
6 on the grounds that the ALJ improperly analyzed the medical opinions of record,
7 and that the ALJ erred in his consideration of Plaintiff's subjective complaints. As
8 is explained below, the ALJ erred in his consideration of the medical opinions and
9 failed to develop the record properly by obtaining medical expert testimony. This
10 matter is remanded for further proceedings.

11 I. Background

12 On June 2, 2021, Plaintiff filed an application for benefits under Title 2, and
13 on June 9, 2021, she filed an application for benefits under Title 16, with both
14 claiming disability beginning January 1, 2016, based on the mental and physical
15 impairments noted above.³ Plaintiff's claim was denied at the initial and
16 reconsideration levels.⁴

21 ³ AR 236-237, 238-244, 282.

22 ⁴ AR 119, 124, 132, 135.

1 After the agency denied Plaintiff benefits, ALJ John Dowling held a
2 telephone hearing in September 2023, at which Plaintiff appeared with her
3 representative and testified.⁵ A vocational expert also appeared and testified.⁶

4 Plaintiff testified that she is 36, single, and lives with her 10-year-old
5 daughter.⁷ She said that she can drive and that she had completed high school and
6 1 ½ years of college but did not have a degree or any vocational training.⁸ She said
7 that she last worked at Fred Meyers for 20-40 hours a week as a deli worker and a
8 cook.⁹ She had to lift 30 to 40 pounds when working there.¹⁰ Before that she
9 worked at Compass Group as a cashier and food prep at a deli inside Boeing's
10 cafeteria.¹¹ She said that she would work as a cashier, doing food prep, or serving
11 customers, and that the heaviest she lifted was 40 pounds.¹² Prior to that, she
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15 ⁵ AR 37-61.

16 ⁶ *Id.*

17 ⁷ AR 2.

18 ⁸ AR 42-43.

19 ⁹ AR 43.

20 ¹⁰ AR 44.

21 ¹¹ AR 44.

22 ¹² AR 44-45.

1 worked at Orange Julius, as an assistant manager which meant she opened and
2 closed and made smoothies.¹³ She lifted 30-40 pounds as part of the job.¹⁴

3 Plaintiff said she left her last job because she was having trouble lifting and
4 carrying things due to carpal tunnel syndrome, and was not able to lift the pans
5 and do the work.¹⁵ She said that the pans became too heavy to lift and she was
6 dropping them.¹⁶ Plaintiff said she had two surgeries – a carpal tunnel release and
7 an ulnar nerve release – but they were not effective and she still had pain.¹⁷
8 Plaintiff said that her doctors attributed her present pain to fibromyalgia and that
9 she gets tingling in her hands, and will lose feeling in her hands if they are above
10 her head for very long.¹⁸ She said she is 5’9” and weighs 350 pounds.¹⁹

11 When asked to identify her biggest obstacle to working, Plaintiff said her
12 pain levels were a constant 7/8 of 10 without medication and 4 of 10 with
13 medication.²⁰ She takes hydrocodone, tramadol, and Sevilla and the medications
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15 ¹³ AR 45-46.

16 ¹⁴ *Id.*

17 ¹⁵ AR 46.

18 ¹⁶ *Id.*

19 ¹⁷ *Id.*

20 ¹⁸ AR 46-47.

21 ¹⁹ AR 47.

22 ²⁰ *Id.*

1 make her tired, drowsy, dizzy, and lightheaded.²¹ Plaintiff said most of her pain is
2 in her knees, hips, and lower back and that it limits her from bending, which
3 makes it difficult for her to bathe, dress, and use the toilet.²² She said it is hard to
4 stand still and she could only stand at the sink to do dishes for 10 to 15 minutes.²³
5 Plaintiff said that she lays down through the day in blocks of one to three hours.²⁴
6 She said that she has good days and bad days and that on a bad day she can't sit
7 still and will be constantly moving around trying to get comfortable.²⁵ She also said
8 that on some days she will just lay still because the pain radiates into her back and
9 it hurts to move.²⁶ She said that on a good day she can stand at the sink for 10-15
10 minutes and can do chores around the house like sweeping and mopping but that
11 she has to rest between tasks.²⁷

12 Plaintiff said her second biggest obstacle to working is her mental health,
13 and that because of her PTSD and anxiety she cannot go out in public most days
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16 ²¹ AR 47-48.

17 ²² AR 48.

18 ²³ *Id.*

19 ²⁴ AR 49.

20 ²⁵ *Id.*

21 ²⁶ *Id.*

22 ²⁷ AR 49-50.

1 and finds it hard to leave her home.²⁸ She said the thought of leaving home makes
2 her shake and vomit.²⁹ She said that at the store she does not want to be touched
3 by other people and will go during work hours when it is less crowded, because if
4 there are too many people she will get tunnel-vision and feel claustrophobic.³⁰ She
5 said that she usually has to leave before she can get everything on her list.³¹
6 Plaintiff said if she has a panic attack in the grocery store she will have to talk
7 herself out of it or have her daughter talk her out of it and then she will leave.³²

8 Plaintiff said she has tried going on three dates but they end badly because
9 she will sit with her back to the crowd and feel people are watching her and talking
10 about her.³³ Plaintiff said her counselor told her she is scared that her ex-husband
11 is in the crowd.³⁴ She said that other than those 3 dates she only socializes over the
12 phone and the only places she will go to are doctor's offices and the DSHS office.³⁵
13 She said that when she leaves home she tries to have her daughter with her but
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15 ²⁸ AR 50.

16 ²⁹ *Id.*

17 ³⁰ *Id.*

18 ³¹ *Id.*

19 ³² AR 51.

20 ³³ *Id.*

21 ³⁴ *Id.*

22 ³⁵ AR 52.

1 will also go out when her daughter is at school.³⁶ She said that it is easier for her
2 when her daughter is with her because she is autistic and will keep Plaintiff
3 focused and on-track.³⁷ Plaintiff said that she can drive for about 30 minutes before
4 she gets too drowsy but that her doctors are trying to find the right pressure for
5 her CPAP machine.³⁸ Plaintiff said that if a drive is over 30 minutes there is a
6 medical transportation that takes her because her knees will lock up when
7 driving.³⁹ She said that 3-4 times a week she will not be able to leave home and
8 that she has had to cancel appointments in the past but is now usually able to
9 schedule a phone appointment.⁴⁰

10 Plaintiff said that since switching to hydrocodone she can sleep for 4-5 hour
11 blocks of time and then sleep another 2-3 hours after a break, but she has night
12 terrors and nightmares 3-4 times a week.⁴¹ She said she has little energy during
13 the day and sleeps to escape pain.⁴² Plaintiff said she can concentrate for about an
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16 ³⁶ *Id.*

17 ³⁷ *Id.*

18 ³⁸ AR 52-53.

19 ³⁹ AR 53.

20 ⁴⁰ *Id.*

21 ⁴¹ AR 54.

22 ⁴² *Id.*

1 hour and likes to write, watch movies, and listen to music, but said she needs some
2 background noise to keep background chatter in her mind away.⁴³

3 Plaintiff said she feels guilt at being a bad mother because she left her
4 husband and some of her daughters live separate from her.⁴⁴ She also has guilt
5 that she engages in cutting daily.⁴⁵ Plaintiff said she has shoulder wounds that she
6 will scratch open and also at times will drag a key across her skin.⁴⁶ Plaintiff said
7 she thinks about suicide at least every other day.⁴⁷

8 After the hearing, the ALJ issued a decision denying benefits.⁴⁸ The ALJ
9 found Plaintiff's alleged symptoms were not entirely consistent with the medical
10 evidence and the other evidence.⁴⁹ As to medical opinions, the ALJ found:

- 11 • The opinions of state agency evaluators Norman Staley, MD, and
12 Merry Alto, MD, to be partially persuasive.

15 ⁴³ *Id.*

16 ⁴⁴ AR 54-55.

17 ⁴⁵ AR 55.

18 ⁴⁶ *Id.*

19 ⁴⁷ *Id.*

20 ⁴⁸ AR 14-36. Per 20 C.F.R. §§ 404.1520(a)-(g), 416.920(a)-(g), a five-step evaluation
21 determines whether a claimant is disabled.

22 ⁴⁹ AR 23-25.

- The opinions of state agency evaluators Kent Reade, PhD, and Matthew Comrie, PsyD, to partially persuasive.
- The opinions of consultative examiner Thomas Genthe, PhD, to be not persuasive.
- The opinions of consultative examiner Nina Flavin, PhD, to be partially persuasive.
- The opinions of Morgan Scott Fife, MD, to be partially persuasive.
- The opinions of George Ankuta, PhD, to be partially persuasive.
- The opinions of Frank Beck, PA-C, to be not persuasive.⁵⁰

As to the sequential disability analysis, the ALJ found:

- Step one: Plaintiff meets the insured status requirements of the Social Security Act through March 31, 2020.
- Plaintiff had not engaged in substantial gainful activity since January 1, 2016, the alleged onset date.
- Step two: Plaintiff had the following medically determinable severe impairments: fibromyalgia, obesity, depression, anxiety, and PTSD.
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments with consideration of Listing 12.04 and 12.15.

⁵⁰ AR 25-27.

- RFC: Plaintiff had the RFC to perform light work with the following exceptions:

She can occasionally climb ramps or stairs but never climb ladders, ropes, or scaffolds; can occasionally stoop, kneel, crouch, or crawl; she is limited to low stress work, defined as occasional decision-making required and occasional changes in the work setting; she is capable of occasional interaction with the public.

- Step four: Plaintiff is unable to perform her past relevant work as a cafeteria attendant, food preparation supervisor, and short order cook.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a router (DOT 222.587-038), a marker (DOT 209.587-034), and a silver wrapper (DOT 318.687-018).⁵¹

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.⁵²

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"⁵³ and such error impacted the nondisability

⁵¹ AR 19-29.

⁵² AR 234.

⁵³ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 405(g).

determination.⁵⁴ Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁵⁵

III. Analysis

Plaintiff seeks relief from the denial of disability on two grounds. She argues the ALJ erred when evaluating the medical opinions and that the ALJ also erred in her assessment of Plaintiff’s testimony.⁵⁶ As is explained below, the Court

⁵⁴ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that “is inconsequential to the ultimate nondisability determination”).

⁵⁵ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

⁵⁶ Plaintiff also argues that the ALJ’s finding at step five is flawed as a result of his errors in evaluating the medical opinions and his subjective testimony.

1 concludes that the ALJ consequentially erred in his evaluation of the medical
2 opinion evidence.

3 **A. Medical Opinion: Plaintiff establishes consequential error**

4 Plaintiff argues the ALJ erred in his evaluation of the medical opinions
5 regarding both Plaintiff's mental impairments and physical impairments.⁵⁷
6 Plaintiff argues that the ALJ improperly rejected all or a portion of the opinions of
7 Dr. Genthe, Dr. Flavin, Dr. Fife, Dr. Ankuta, Mr. Beck, Dr. Staley, Dr. Alto,
8 Dr. Reade, and Dr. Comrie without providing more than a vague and conclusory
9 statement in each instance.⁵⁸ Plaintiff argues that the ALJ failed to articulate his
10 reasoning and consideration of the factors of supportability and consistency when
11 evaluating the medical opinions. The Commissioner counter argues that the ALJ
12 properly considered the medical opinions and that Plaintiff's argument that the
13 ALJ's reasoning was not properly articulated arrives at that conclusion by
14 engaging in circular logic.⁵⁹

17 ⁵⁷ An ALJ must consider and articulate how persuasive she found each medical
18 opinion, including whether the medical opinion was consistent with and supported
19 by the record. 20 C.F.R. §§ 404.1520c(a)-(c), 416.920c(a)-(c); *Woods v. Kijakazi*, 32
20 F.4th 785, 792 (9th Cir. 2022).

21 ⁵⁸ ECF No. 10.

22 ⁵⁹ ECF No. 12.

1 1. Standard

2 The ALJ was required to consider and evaluate the persuasiveness of the
3 medical opinions and prior administrative medical findings.⁶⁰ The factors for
4 evaluating the persuasiveness of medical opinions and prior administrative
5 medical findings include, but are not limited to, supportability, consistency,
6 relationship with the claimant, and specialization.⁶¹ Supportability and consistency
7 are the most important factors,⁶² and the ALJ must explain how she considered the
8 supportability and consistency factors when reviewing the medical opinions and
9 support her explanation with substantial evidence.⁶³ The ALJ may consider, but is
10 not required to discuss the following additional factors: the source's relationship to
11 Plaintiff such as length of the treatment, purpose of the treatment relation and
12 whether the source examined Plaintiff, as well as whether the source had advanced
13 training or experience to specialize in the area of medicine in which the opinion

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16 ⁶⁰ 20 C.F.R. §§ 404.1520c(a), (b), 416.920c(a), (b).

17 ⁶¹ *Id.* §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)–(5).

18 ⁶² *Id.* §§ 404.1520c(b)(2), 416.920c(b)(2).

19 ⁶³ *Id.* §§ 404.1520c(b)(2), 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The
20 agency must articulate . . . how persuasive it finds all of the medical opinions from
21 each doctor or other source and explain how it considered the supportability and
22 consistency factors in reaching these findings.”) (cleaned up).

1 was being given.⁶⁴ When considering the ALJ's findings, the Court is constrained to
2 the reasons and supporting explanation offered by the ALJ.⁶⁵

3 2. Relevant Medical Evidence and Opinions

4 a. Dr. Staley

5 On September 23, 2021, Plaintiff's file was reviewed by state agency
6 physician Norman Staley, MD.⁶⁶ Dr. Staley opined that Plaintiff has the ability to
7 occasionally lift and carry up to 20 pounds; to frequently lift and carry up to 10
8 pounds; to stand for a total of 2 hours in an 8-hour day, to sit for up to 6 hours in
9 an 8-hour day; and to push and pull with his lower extremities no more than 10
10 pounds frequently or 20 pounds occasionally.⁶⁷ He opined that Plaintiff could never
11 climb ladders, ropes, or scaffolds; could frequently balance; and could occasionally
12 climb ramps and stairs, stoop, kneel, crouch, and crawl.⁶⁸ He opined that bilateral
13 handling was limited to frequent due to the residual effects of carpal tunnel
14 syndrome, post-release.⁶⁹ Dr. Staley also opined that Plaintiff should avoid
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16 ⁶⁴ Id.

17 ⁶⁵ See *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court
18 review is constrained to the reasons the ALJ gave).

19 ⁶⁶ AR 73.

20 ⁶⁷ AR 71.

21 ⁶⁸ AR 72.

22 ⁶⁹ Id.
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1 concentrated exposure to extreme cold and even moderate exposure to noise,
2 vibration, fumes, and hazards.⁷⁰

3 ***b. Dr. Reade***

4 On October 18, 2021, Plaintiff's file was reviewed by state agency
5 psychologist Kent Reade, PhD.⁷¹ He opined that Plaintiff does not have limitations
6 in understanding or memory but has limitations in concentration and
7 persistence.⁷² He opined that Plaintiff has a mild limitation in the domain of
8 understand, remember, and apply information.⁷³ Dr. Reader also opined that
9 Plaintiff had a moderate limitation in the following three domains: interact with
10 others; concentrate, persist and maintain pace; and adapt or manage oneself.⁷⁴

11 ***c. Dr. Comrie***

12 On May 6, 2022, Plaintiff's file was reviewed at the reconsideration level by
13 state agency psychologist Matthew Comrie, PsyD.⁷⁵ Dr. Comrie opined that there
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17 ⁷⁰ AR 73.

18 ⁷¹ AR 69.

19 ⁷² AR 73.

20 ⁷³ AR 69.

21 ⁷⁴ *Id.*

22 ⁷⁵ AR 92.

1 was insufficient evidence to determine Plaintiff's limitations on or before the date
2 last insured.⁷⁶

3 *d. Dr. Alto*

4 On May 31, 2022, Plaintiff's file was reviewed by state agency physician
5 Merry Alto, MD. ⁷⁷Dr. Alto adopted Dr. Staley's restrictions for lifting, carrying,
6 pushing, and pulling, as well as his postural and manipulative limitations.⁷⁸ She
7 opined that with regard to environmental limitations Plaintiff should avoid
8 concentrated exposure to the following: extreme cold, noise, vibration, fumes, and
9 hazards.⁷⁹

10 *e. Dr. Fife*

11 On September 21, 2017, Plaintiff was examined by Morgan Scott Fife, MD.⁸⁰
12 Dr. Fife completed an assessment for the Washington State Department of Social
13 and Human Services (DSHS).⁸¹ Dr. Fife noted that on examination Plaintiff had a
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17 ⁷⁶ AR 92.

18 ⁷⁷ AR 96.

19 ⁷⁸ AR 94-95.

20 ⁷⁹ AR 96.

21 ⁸⁰ AR 905-906.

22 ⁸¹ *Id.*

1 normal gait and station but had a positive Tinel⁸² and Phalen⁸³ sign in the right
2 and left upper extremities.⁸⁴ Dr. Fife opined that Plaintiff had carpal tunnel
3 syndrome, bilateral upper limbs; and anxiety.⁸⁵ Dr. Fife opined that Plaintiff carpal
4 tunnel syndrome imposed a marked limit on her ability to lift handle and carry.⁸⁶
5 He also opined that Plaintiff's anxiety had a moderate limitation on her ability to
6 communicate, understand and follow directions.⁸⁷ Dr. Fife opined that Plaintiff's
7 overall work level was severely limited and that the limitations would continue for
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10 ⁸² The Tinel Sign is a test for peripheral nerve entrapment, which is performed by
11 the examiner tapping firmly with a fingertip throughout the nerve, and it indicates
12 entrapment of the nerve depending on the point at which symptoms are provoked.
13 National Institute of Health, *Hoffmann Tinel Sign*, NCBI Bookshelf (nih.gov) (last
14 viewed November 20, 2024.)

15 ⁸³ Phalen's test is a test for carpal tunnel syndrome in which an examiner moves a
16 patient's hands and wrists in a series of movements intended to put light pressure
17 on the median nerve in the wrist. Cleveland Clinic, *Phalen's Test: What It Is &*
18 *How It's Performed* (clevelandclinic.org) (last viewed November 20, 2024.)

19 ⁸⁴ AR 905.

20 ⁸⁵ *Id.*

21 ⁸⁶ *Id.*

22 ⁸⁷ *Id.*

1 at least 12 months without treatment.⁸⁸ Dr. Fife noted that Plaintiff would be
2 undergoing a carpal tunnel release surgery but opined that in the future Plaintiff's
3 work should be limited to one what did not require exposure to "lots of people."⁸⁹

4 *f. Dr. Genthe*

5 On October 3, 2017, Thomas Genthe, PhD, examined Plaintiff at the request
6 of DSHS.⁹⁰ Dr. Genthe provided a detailed report that included a psychosocial
7 history; medical and mental health treatment history; educational and work
8 history; (absence of) substance abuse and chemical dependency history; description
9 of activities of daily living; clinical findings; diagnosis; medical source statement;
10 mental status examination; and psychometric assessment results for a personality
11 assessment inventory test administered to Plaintiff.⁹¹ Dr. Genthe opined that
12 Plaintiff suffers from bipolar II disorder, with anxious stress; panic disorder;
13 agoraphobia; and PTSD.⁹² Dr. Genthe opined that Plaintiff would have a moderate
14 impairment in the following activities: understand, remember, and persist in tasks
15 by following detailed instructions; adapt to changes in a routine work setting; be
16 aware of normal hazards and take appropriate precautions; and set realistic goals

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18 ⁸⁸ *Id.*

19 ⁸⁹ *Id.*

20 ⁹⁰ AR 359-369.

21 ⁹¹ *Id.*

22 ⁹² AR 362.

1 and plan independently.⁹³ Dr. Genthe opined that Plaintiff would have a marked
2 impairment in the following activities: ask simple questions or request assistance,
3 communicate, and perform effectively in a work setting, maintain appropriate
4 behavior in a work setting, and complete a normal workday and workweek without
5 interruptions from psychologically based symptoms.⁹⁴ Dr. Genthe opined that the
6 overall severity of Plaintiff's mental impairments was severe, that none of
7 Plaintiff's limitations were due to substance use, that Plaintiff's impairments
8 would last 9-12 months with appropriate treatment, and that vocational training
9 would minimize or eliminate barriers to employment.⁹⁵

10 *g. Dr. Flavin*

11 On February 16, 2021, Plaintiff's treating medical source Nina Flavin, MD,
12 completed a WorkFirst Medical Disability Form.⁹⁶ Dr. Flavin noted that Plaintiff
13 has physical, mental, and emotional issues, and that she has been diagnosed with
14 fibromyalgia, depression, PTSD, and anxiety and that the diagnoses are supported
15 by objective testing.⁹⁷ Dr. Flavin opined that Plaintiff's conditions limit her ability
16 to work and explained that "flexible work hours [are] needed given underlying
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18 ⁹³ *Id.*

19 ⁹⁴ *Id.*

20 ⁹⁵ AR 363.

21 ⁹⁶ AR 369-373.

22 ⁹⁷ AR 369.

1 medical condition.”⁹⁸ She also opined that Plaintiff would be limited to working 21-
2 30 hours per week.⁹⁹ Dr. Flavin opined that Plaintiff did not have limitations with
3 lifting and carrying but that she was limited to the light level of exertion.¹⁰⁰
4 Dr. Flavin opined as well that Plaintiff’s condition did not limit her access to
5 services, and that the condition and its affect on the ability to work was
6 permanent, and noted that the treatment plan was doctor visits, medication, and
7 counseling.¹⁰¹ Dr. Flavin opined that Plaintiff had no issues that required further
8 evaluation.¹⁰²

9 *h. Dr. Ankuta*

10 On October 5, 2021, George Ankuta, PhD, examined Plaintiff at the request
11 of the Commissioner.¹⁰³ Dr. Ankuta reviewed the October 3, 2017 evaluation of
12 Dr. Genthe as well as the September 2, 2021 treatment note written by ARNP
13 Kristien Kehler.¹⁰⁴ Plaintiff reported that she suffered from fibromyalgia, carpal
14 tunnel in both wrists, tennis elbow in both elbows, arthritis in her knee, chronic
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16 ⁹⁸ *Id.*

17 ⁹⁹ *Id.*

18 ¹⁰⁰ AR 370.

19 ¹⁰¹ *Id.*

20 ¹⁰² AR 371.

21 ¹⁰³ AR 1505-1509.

22 ¹⁰⁴ AR 1505.

1 stomach pain, PTSD, bipolar disorder, and anxiety.¹⁰⁵ Dr. Ankuta noted that on
2 mental status examination Plaintiff was poorly groomed with greasy hair, had
3 intermittent eye contact, had rapid speech which required effort to understand,
4 used simple language, had muted affect and depressed or manic mood, was able to
5 complete serial 7's and 3's with one error each, and was able to perform simple
6 math.¹⁰⁶ Dr. Ankuta diagnosed PTSD and bipolar II disorder and opined that
7 Plaintiff's prognosis was fair.¹⁰⁷ Dr. Ankuta rendered the following opinion:

8 She has an adequate fund of knowledge. She demonstrated that
9 ability to think abstractly. Her memory was adequate for recalling
10 simple and perhaps complex instructions at work. Her attention and
11 concentration were fair to adequate. She may have difficulty
12 sustaining the pace of competitive work. She had an emotionally
13 abusive childhood. She had an emotionally and sexually abusive
14 marriage of 12 years. She has limited contact with her brother. She
15 has one friend of 10 years that she is out of contact with for a few
16 months after a dispute. She was awkward in her interaction with the
17 evaluator due to emotional volatility and limited social skills. She may
18 have difficulty functioning socially in a competitive work situation.
19 She may have difficulty tolerating the emotional stress of competitive
20 work.¹⁰⁸

21 ¹⁰⁵ *Id.*

22 ¹⁰⁶ AR 1507.

23 ¹⁰⁷ *Id.*

¹⁰⁸ AR 1507-1508.

1 *i. PA-C Beck*

2 On February 22, 2022, Frank Weston Beck, PA-C, examined Plaintiff and
3 completed an evaluation for the DSHS.¹⁰⁹ Plaintiff complained of fibromyalgia,
4 knee pain in the right knee, carpal tunnel syndrome following carpal tunnel and
5 ulnar nerve surgery, chronic abdominal pain with IBS, depression, anxiety, and
6 PTSD.¹¹⁰ On examination Plaintiff looked tired; walked with an antalgic gait; had
7 reduced range of motion of the back, hips, and knees; had a minimally decreased
8 grip strength bilaterally, had decreased sensation to light touch bilaterally, and
9 had a flat affect.¹¹¹ PA-C Beck diagnosed Plaintiff with fibromyalgia of marked
10 severity; carpal tunnel syndrome of moderate severity; generalized anxiety
11 disorder of marked severity; PTSD of marked severity; and IBS of mild severity.¹¹²
12 PA-C Beck opined that Plaintiff's fibromyalgia would affect her ability to sit, stand,
13 walk, lift, handle, and carry; that her carpal tunnel syndrome would affect her
14 ability to lift, handle. and carry; that her anxiety would affect her ability to
15 communicate, understand, and follow directions; that her PTSD would affect her
16 ability to communicate, understand, and follow directions; and that her IBS would

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¹⁰⁹ AR 1614-1623.

20 ¹¹⁰ AR 1615.

21 ¹¹¹ AR 1619.

22 ¹¹² *Id.*

1 affect her ability to sit, stand, walk, and lift.¹¹³ PA-C Beck opined that Plaintiff was
2 limited to sedentary work overall and that the limitation would last at least 12
3 months.¹¹⁴

4 3. Analysis

5 Plaintiff argues that the ALJ erred by improperly rejecting all or a portion of
6 every medical opinion of record and formulating an RFC that was not specifically
7 supported by any medical opinion. The Commissioner argues that the ALJ gave
8 good reasons to discount the opinions of the medical sources and that the ALJ
9 properly resolved conflicts in the record. The Court disagrees with the
10 Commissioner. While the Commissioner correctly argues that the RFC need not be
11 based on any specific medical opinion, Plaintiff is correct in her assertion that the
12 ALJ failed to adequately articulate his consideration of the supportability and
13 consistency of the opinions.

14 a. The ALJ's consideration of Dr. Genthe's opinions

15 The ALJ articulated his consideration of Dr. Genthe's opinions as follows:

16 The opinion of Dr. Genthe was also considered (1F/4-5). This opinion
17 is not supported by the doctor's examination that shows good hygiene,
18 normal speech, cooperative attitude, friendly behavior, normal
19 thought content and thought process, normal memory, normal
calculations, and fair to good insight and judgment (1F/6-7). Further,
his opinion of marked mental limitations is inconsistent with
examinations that show no depression, anxiety, or agitation; no acute

21 ¹¹³ *Id.*

22 ¹¹⁴ AR 1620.

1 distress; or only mildly abnormal affect (3F/5, 9; 5F/39, 46, 51, 61, 81,
2 153, 195, 272, 339). Therefore, this opinion is not persuasive.¹¹⁵

3 Plaintiff argues that the ALJ's reasoning is flawed for several reasons.

4 First, Plaintiff argues that the ALJ erred in discounting Dr. Genthe's opinion that
5 Plaintiff would have difficulty dealing with stress because the ALJ failed to
6 consider that functioning when in a clinical setting is different than a work setting.
7 Also, Plaintiff argues that the results of the psychometric assessment administered
8 by Dr. Genthe support his assessed limitations and the ALJ did not consider the
9 results of the psychometric assessment. Plaintiff additionally argues that the ALJ
10 did not properly articulate the manner in which the treatment notes that he cited
11 are inconsistent with Dr. Genthe's opined limitations. The Commissioner counter
12 argues that the ALJ did account for Dr. Genthe's opined limitation in dealing with
13 stress by limiting Plaintiff to "low stress" jobs. He also argues that the ALJ did not
14 err in failing to consider the results of the psychometric testing because Dr. Genthe
15 did not say that he relied on them to formulate the opined limitations.

16 Additionally, the Commissioner argues that the "normal" mental status findings in
17 the treatment notes cited by the ALJ are sufficient to support his reasoning.

18 The Court find the Commissioner's argument persuasive that the ALJ
19 adequately explained that the treatment records he cited contained "normal"
20 finding on mental status examinations. While the ALJ could have done a better job

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22 ¹¹⁵ AR 26.

1 of explaining the exact findings he found inconsistent, his language was sufficient
2 to allow a reviewing court to understand the finding he found inconsistent.
3 Additionally, the Court finds the Commissioner's argument persuasive that the
4 ALJ did not err in considering that Plaintiff was able to function in a clinical
5 setting. Plaintiff is correct that the ability to function in a clinical setting is not
6 analogous to the ability to function in a work setting, but one's ability to function in
7 a clinical setting is a factor to consider when assessing one's general ability to
8 function, particularly in a situation such as Dr. Genthe's examination in which the
9 patient is not familiar with the examiner. If Plaintiff's argument were to be
10 credited, there would be little if any use for a mental status examination to be
11 performed because its results would be of no value.

12 The Court, however, is persuaded by Plaintiff's argument that the ALJ did
13 not address the results of the Personality Assessment Inventory (PAI)
14 administered by Dr. Genthe when assessing the supportability of his opinions. The
15 PAI is a test containing 344 self-reported questions whose questions address 4
16 separate scales and it is regarded by the American Psychological Association to be
17 a valid and objective indicator of function.¹¹⁶ "The PAI consists of 22 non-
18 overlapping scales, including 4 validity scales, 11 clinical scales, 5 treatment
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20

21 ¹¹⁶ American Psychiatric Association, *The Personality Assessment Inventory*,
22 www.psychonet.apa.org. (last viewed November 19, 2024).
23

1 scales, and 2 interpersonal scales.”¹¹⁷ For that reason, it is generally regarded as
2 an objective test by medical professionals.¹¹⁸

3 When discussing the results of the PAI, Dr. Genthe noted that there was an
4 implication that Plaintiff might have overreported symptoms but stated that even
5 with that factor he considered the test to indicate a serious anxiety. He said:

6 The PAI clinical profile is marked by significant elevations across
7 several scales, indicating a broad range of clinical features and
8 increasing the possibility of multiple diagnoses. Given certain
9 response tendencies previously noted, it is possible that the clinical
10 scales may overrepresent or exaggerate the actual degree of
11 psychopathology. Nonetheless, profile patterns of this type are usually
12 associated with marked distress and, unless there is extensive
13 distortion or exaggeration of symptomology, severe impairment in
14 functioning is typically present. The configuration of the clinical
15 scales suggests a person with marked anxiety and tension. . . ¹¹⁹

12 Based on Dr. Genthe’s lengthy and detailed analysis of the results of the
13 PAI, as well as its acceptance by medical professionals as objective evidence, the
14 Court concludes that it was not possible for the ALJ to adequately address the
15 supportability of Dr. Genthe’s opinions without considering the results of the PAI.

16 The Court rejects the Commissioner’s argument that the ALJ was not
17 required to consider the results of the PAI because Dr. Genthe did not explicitly
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19 ¹¹⁷ Cambridge University Press, *Handbook of Clinical Assessment, 17 – Personality*
20 *Assessment Inventory*, www.cambridge.org

21 ¹¹⁸ *Id.*

22 ¹¹⁹ AR 366.

1 state that he considered the results when formulating his opinions. Dr. Genthe's
2 detailed recitation of the results of the PAI and his interpretation of it were
3 contained in the same report in which he rendered his opinions. The ALJ cited to
4 the results of the mental status examination, which were also contained in the
5 report, when considering the supportability, despite the fact that Dr. Genthe did
6 not specifically state that he relied on those in formulating the opinions.

7 The Court finds it clear from the structure of Dr. Genthe's report that he
8 formulated his opinions on the basis of his thorough interview with Plaintiff, the
9 mental status examination, and the results of the PAI. It was error for the ALJ to
10 not consider the objecting testing when addressing supportability, and the Court
11 concludes that remand is warranted.

12 *b. The ALJ's consideration of Dr. Fife's and Dr. Ankuta's opinions*

13 The Court also finds that the ALJ failed to properly consider the consistency
14 factor of these opinions. The regulations are clear that the ALJ is required to
15 consider and articulate his reasoning both as to the supportability factor *and* the
16 consistency factor.¹²⁰ The regulations are clear that a proper and thorough analysis
17 of one of the two factors is not enough to overcome the failure to address the
18 second.

19 The ALJ articulated the following reasoning in partially rejecting the
20 opinions of Dr. Fife:

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22 ¹²⁰ 20 C.F.R. §§ 404.1520c(b)(2); 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785.
23

1 Dr. Fife provided an opinion that was also considered (5F/299). The
2 portion regarding a social interaction limitation is not supported by
3 this doctor's examination that reveals no evidence of depression,
4 anxiety, or agitation (Id.). While exposure to "lots of people" is not
5 clear, it generally implies a limited ability to interact with the public.
6 The undersigned has accounted for this general implication by
7 including a limitation to occasional interaction with the public, which
8 is consistent with symptoms of social anxiety and panic attacks as
9 well as flat affect (1F/2; 5F/214, 223, 302; 10F/7; 25F/16; 27F/24).
10 Additionally, the doctor opined the claimant's bilateral carpal tunnel
11 syndrome would affect her ability to lift, handle, and carry for twelve
12 months. This is not supported by the doctor's treatment notes that
13 shows significant improvement following treatment with no further
14 follow-up required (5F/291). Further, this is inconsistent with
15 improved hand pain and reports of crocheting (8E/2; 26F/16). Thus,
16 this opinion is partially persuasive.¹²¹

17
18 The ALJ then went on to articulate the following reasoning to support his
19 finding that the opinions of Dr. Ankuta were only partially persuasive:
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21 The opinion of Dr. Ankuta is partially persuasive (8F/3-4). The portion
22 of this opinion regarding difficulty with pace is not supported by the
23 examiner's findings that show the ability to think abstractly and no
problems performing neuropsychological tests (8F/3). This is also
inconsistent with the claimant's reports of doing well in school,
independently performing activities of daily living, and taking care of
her daughter as well as logical, linear thoughts and normal
concentration (5E/2; 1F/3; 7F/101; 14F/7; 27F/81). The remaining
portions are supported by the examination that reveals intermittent
eye contact, poor grooming, awkward social interaction, and emotional
volatility but otherwise adequate memory and concentration (Id.). It is
also generally consistent with the claimant's reports of anxiety and
panic attacks and findings of abnormal affect (1F/2; 5F/302, 307;
10F/7; 25F/16; 27F/24). As such, this opinion is partially persuasive.¹²²

21 ¹²¹ AR 26-27.

22 ¹²² AR 27.

1 Here, as was noted, the ALJ reasoned that Dr. Fife’s examination did not
2 support a limitation in social interaction but ignored the fact that Dr. Ankuta
3 noted significant limitations in social interaction. At the minimum, the ALJ was
4 required to consider the consistency of Dr. Fife’s opinions with the evidence and did
5 not do so. Moreover, the ALJ failed to adequately articulate his reasoning as to how
6 a limitation to occasional contact with the public accounted for the limitations
7 opined to by Dr. Fife and Dr. Ankuta.

8 The ALJ’s reasoning that the findings from the examiners’ mental status
9 examinations showed only minor abnormalities is incorrect. On examination by
10 Dr. Ankuta, Plaintiff was poorly groomed, was very awkward socially, and was, by
11 Dr. Ankuta’s description, “emotionally volatile.”¹²³ Plaintiff described to
12 Dr. Ankuta that she had limited contact with her family and had been out of
13 contact for months with her only friend following a dispute.¹²⁴

14 Accordingly, the Court concludes that the reasons that the ALJ articulated
15 as to the consistency factor were not “good reasons” to discount the medical
16 opinions. The Court concludes that remand is warranted for the ALJ to properly
17 consider the medical opinion evidence both as to the supportability factor and as to
18 the consistency of the medical opinions that Plaintiff suffers marked limitations in
19 social functioning.

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21 ¹²³ AR 1507-1508.

22 ¹²⁴ *Id.*
23

1 c. The ALJ's consideration of the remaining medical opinions

2 Because the Court has remanded the case, it is not necessary to address the
3 remaining opinions. On remand, the ALJ is to better articulate his reasoning as to
4 the persuasiveness of the medical opinions.

5 4. Summary

6 Because the ALJ failed to properly consider the consistency and
7 supportability of the medical opinion evidence, a remand for further proceedings is
8 warranted.

9 **B. Plaintiff's Subjective Complaints: The Court finds the issue moot.**

10 Plaintiff argues the ALJ failed to properly his testimony. As discussed above,
11 the ALJ failed to properly consider the medical opinion evidence. Because the
12 Court has remanded the case for consideration of the record as a whole, the Court
13 finds this issue is moot.

14 **C. Remand for Further Proceedings**

15 Plaintiff submits a remand for payment of benefits is warranted. The
16 decision whether to remand a case for additional evidence, or simply to award
17 benefits, is within the discretion of the court.”¹²⁵ When the court reverses an ALJ's
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21 ¹²⁵ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
22 761 F.2d 530 (9th Cir. 1985)).
23

1 decision for error, the court “ordinarily must remand to the agency for further
2 proceedings.”¹²⁶

3 The Court finds that further development is necessary for a proper disability
4 determination.

5 **IV. Conclusion**

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. The ALJ’s nondisability decision is **REVERSED**, and this matter is
8 **REMANDED** to the Commissioner of Social Security for further
9 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

10 2. The Clerk’s Office shall **TERM** the parties’ briefs, **ECF Nos. 10 and**
11 **12**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

12 IT IS SO ORDERED. The Clerk’s Office is directed to file this order and
13 provide copies to all counsel.

14 DATED this 16th day of December, 2024.

15 

16 **EDWARD F. SHEA**
17 Senior United States District Judge
18

19 ¹²⁶ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).
23